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IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA,

Petitioners,

vs.

THE REVEREND JOHN D. BARKER, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether California's retroactive imposition of an artificial and restrictive standard for resolving church property disputes so subverts the arrangements adopted by the Episcopal Church for the ownership and control of church property in reliance on prior California law as to interfere with the free exercise of religion and deprive the Episcopal Church of property without due process, in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution?

2. Whether the United States Constitution, as interpreted by prior decisions of this Court, prohibits the recognition of implied trusts affecting property held by religious organizations?

3. Whether the State of California can constitutionally deprive churches of the protections afforded to the property of secular charities by the state's charitable trust laws?

4. Whether the First and Fourteenth Amendments permit State courts to ignore entirely church canons, church doctrine and the clear intent of both the organizers of local parishes and the national church in resolving church property disputes simply because no express trust affecting church property can be found?

PARTIES

The Protestant Episcopal Church in the Diocese of Los Angeles was plaintiff and respondent in the Court of Appeal of the State of California. The Protestant Episcopal Church in the United States of America, an unincorporated association, and the Attorney General of the State of California were cross-defendants and respondents in the Court of Appeal. The Attorney General submitted a short Trial Statement at the time of trial but has not otherwise participated in the trial or appellate proceedings.

Defendants and appellants in the Court of Appeal were the parish corporations, their rectors and the members of their vestries, as indicated in the footnote.* The parishes will be referred to throughout this petition as St. Mary's, St. Matthias, Our Saviour and Holy Apostles.

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* (1) No. C 188907: The Rector, Wardens and Vestrymen of St. Mary of the Angels' Parish, in Hollywood, Los Angeles, California, a corporation, The Reverend John D. Barker, Spencer V. Bonanomi, Romer McCamy, Francis Dowd, Philip J. Mayfield, Jose Cedeno, Carol Maher, Otis Coontz, Ron Jernigan, Kenneth Maher and Forrest Wood; (2) No. C 189571: The Rector, Wardens and Vestrymen of St. Matthias Parish at Los Angeles, County of Los Angeles, a corporation, The Reverend William T. St. John Brown, Harold Abdo, James Sampley, David Bogna, Paul Caskey, George Knight, Sal Mariano, Neil Paquin, Christine Schulze and Robert North; (3) No. C 189572: The Rector, Wardens and Vestrymen of Church of Our Saviour, in Los Angeles, California, a corporation, The Reverend Forrest Ogden Miller, Robert R. Perkins, William R. Jackson, Thomas Gammage, Florence Gammage, Alexander Dillibe and James Hetlin; and; (4) No. C 190652: The Rector, Wardens and Vestrymen of The Church of The Holy Apostles in Glendale, California, a corporation, The Reverend George H. Clendenin, Edwin Bowes, Eugene Zimmer, Thomas Foreman, Donald Hewitt, Victor Maling, Paul Lambach, Charles Dahlquist, Donald E. Nist, Robert R. Lewis, Charles L. Minier, George W. Vreeland and John E. Booth.

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

Petitioners, The Protestant Episcopal Church in the United States of America (the "Episcopal Church") and The Protestant Episcopal Church in the Diocese of Los Angeles (the "Diocese") respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the Court of Appeal for the State of California, Second Appellate District, in these consolidated cases.

OPINIONS BELOW

The majority and dissenting opinions of the California Court of Appeal are published at 115 Cal. App. 3d 599 and 171 Cal. Rptr. 541, and an order modifying the majority opinion is published at 116 Cal. App. 3d 373b. The findings of fact, conclusions of law and judgment of

the trial court are not published. The Court of Appeal's order denying petitioners' request for a rehearing is not published, nor is the California Supreme Court's order denying petitioners' request for a hearing in that Court. All of these materials are reproduced in the Appendix.

JURISDICTION

The California Court of Appeal's opinion was filed on January 30, 1981. Petitioners timely requested a rehearing by that court, which request was denied on March 2, 1981. Petitioners then timely requested a hearing in the California Supreme Court, which request was denied on April 22, 1981. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment, Fifth Amendment, and Section 1 of the Fourteenth Amendment to the United States Constitution:

First Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Fifth Amendment. "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment. "Section 1. . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case presents the issue left unresolved in *Jones v. Wolf*, 443 U.S. 595 (1979): Can a State radically change the law by which it resolves church property disputes and apply the new law retroactively to churches that structured their affairs in reliance on the prior law? The

California Court of Appeal did just that in this case, and to compound its error also held that this Court's prior decisions prohibit the recognition of implied trusts affecting church property. California alone of the numerous jurisdictions which have considered and resolved property disputes in the Episcopal Church since 1976* has failed to recognize and give effect to the measures adopted by the Episcopal Church for the control and management of church property.

For more than 85 years, California courts consistently followed this Court's decision in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), and held that dissident members of a local church, even if they constitute a majority of the members, cannot divert to new and different purposes the property of a local church that is part of a larger, hierarchical church organization. The Episcopal Church and the Diocese of Los Angeles structured their arrangements for the ownership and control of property used by local congregations of the Church in reliance upon this body of decisional and statutory law.

With a stroke of the pen, however, a divided panel of the California Court of Appeal has purported to erase the precedent upon which the Episcopal Church and the Diocese relied. Although the Episcopal Church is undeniably hierarchical in structure and the organic documents of its parishes clearly recognize this fact, the Court of Appeal in this case held that seceding members of three Los Angeles parishes could retain Church property after their break with the Church. Under the guise of "neutral principles of law," the Court of Appeal majority rejected prior California law and substituted retroactively a requirement that facts constituting an express trust must exist before

* At its 1976 General Convention, the Episcopal Church authorized the ordination of women as priests and made certain changes in the Book of Common Prayer. These changes led a variety of dissident congregations to attempt to leave the Episcopal Church with Church property and engendered litigation throughout the country.

any limitation will be placed on the use of church property by the individuals currently in control of a local congregation. This decision so completely defeats the legitimate expectations of the Episcopal Church and its many loyal members who contributed property to the parishes over the years that it amounts to an interference with the free exercise of religion and a deprivation of important property rights without due process of law.

The Court of Appeal also refused to recognize any implied trust in favor of the Episcopal Church because it believed that the United States Constitution and prior decisions of this Court (especially *Jones v. Wolf, supra)* prohibit the recognition of implied trusts affecting property held by religious organizations. Not only is this perception of *Jones v. Wolf* and prior cases incorrect, but its anomalous consequence is that religious and secular charities in California will henceforth be regulated by quite different standards. Far from following this Court's directive to resolve church property disputes by applying "neutral principles of law, developed for use in all property disputes"* or "objective, well-established concepts of trust and property law familiar to lawyers and judges,"** the Court of Appeal majority did just the opposite, and for this additional reason interfered with the free exercise of religion by hierarchical churches in California.

These constitutional errors affect not only the Episcopal Church, but also numerous other church organizations and their members. The extent of the California court's departure from established constitutional norms will be demonstrated by a more detailed review of the organization and structure of the Episcopal Church, the evolution of

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* *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449 (1969).

** *Jones v. Wolf,* 443 U.S. 595, 603 (1979).

California law governing religious and charitable organizations, the history of the four Los Angeles parishes, and the proceedings below.

Organization and Structure of The Episcopal Church and the Diocese. The Episcopal Church is undeniably hierarchical in character. The trial court so found (App. 51a)*, and the Court of Appeal did not disturb this finding. The hierarchical character of the Church has been recognized by numerous other authorities. *See, e.g., Watson v. Jones, supra*, 80 U.S. at 729; *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 417 A.2d 19, 83 N.J. 572 (1980).**

The supreme governing authority of the Episcopal Church is its General Convention, which is composed of a House of Bishops and a House of Deputies. The General Convention of the Church meets in regular session every three years, and the business of the Church is managed between meetings by the Presiding Bishop, an Executive Council, and committees or commissions of the General Convention.

Geographically, the Episcopal Church is subdivided into 93 dioceses, of which the Diocese of Los Angeles is one. Each diocese is governed by a Diocesan Convention, which meets at least annually and which is composed of elected representatives from each parish and mission in the diocese. Between meetings of the Diocesan Convention, the business of the diocese is conducted by a Diocesan Bishop (who is elected by the Convention), by a Standing Committee elected by the Convention as the Bishop's council of advice, and by numerous other committees and commissions created by the Convention.

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* Citations to "App." are to the appendix to this petition.

** Case histories are not included in the text of this petition unless germane to the discussion. Full case histories appear in the table of authorities.

Both the Episcopal Church and the Diocese of Los Angeles have adopted Constitutions and Canons for the governance of the Church. The Constitutions and Canons of the national Church and the Diocese govern all aspects of church life, including both secular and religious matters. As detailed below, the Constitutions and Canons have always provided for strict parish allegiance to the national Church and Diocese, and for ultimate Diocesan control over parish property.

Congregations "belong" to the Diocese by becoming missions or parishes, and this process is governed by Canons IX and X of the Diocesan Canons. Congregations normally organize first as missions, under the direct supervision of the Diocesan Bishop, and apply for parish status when they have grown large enough to sustain themselves. In its application to the Diocesan Convention for parish status, a congregation must demonstrate that it is self-supporting and meet certain other requirements imposed by the Canons. Importantly, the application must include

> "a promise and declaration on the part of such communicants that the said Parish shall be forever held under, and that they shall conform to and be bound by, the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, and the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles." Canon 10.01.

This requirement has been a part of the Diocesan Canons since at least 1905, before any of the parishes here involved were admitted into the Diocese.

After the Diocesan Convention approves a parish's application, the Canons provide that the parish "may incorporate under the laws of the State of California," so long as its by-laws

> "provide that the Constitution and Canons of the Protestant Episcopal Church in the United States of America,

and the Constitution and Canons of the said Church in the Diocese of Los Angeles, from time to time in effect, shall be incorporated in said By-Laws; and that in case of any conflict between said Constitution or Canons and said By-Laws, the former shall prevail over and in all respects supersede and to that extent effect the repeal of the said By-Laws." Canon 10.05.

In addition, § 39 of the Diocesan Constitution requires, as a condition for admission of a parish into union with the Diocesan Convention, that the parish present articles of incorporation "in which such Parish expressly accedes to the Constitution, Canons, doctrine, discipline and worship of the Protestant Episcopal Church in the United States of America, and to the Constitution and Canons of the Church in the Diocese of Los Angeles."

Once a parish has been admitted into union with the Diocese, the Diocesan Canons provide that property previously held for the parish by the Diocese or the Bishop shall be conveyed to the parish. Parish control over the property, however, is limited in three important respects by the Constitutions and Canons of the national Church and the Diocese by which, as noted above, all parishes must promise to be bound. First, the national Canons provide that no parish "shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part." Title I, Canon 6, § 3. This prohibition is echoed in the Canons of the Diocese of Los Angeles, which provide:

"Should any Parish desire to mortgage or otherwise encumber, to sell, exchange or otherwise dispose of all or any of its real property, or to acquire, except by gift, devise, or bequest, any real property subject to an existing encumbrance, or to assume an existing encumbrance, the written consent of the Bishop and Standing Committee must be obtained prior to any such sale,

exchange, mortgage, or other encumbrance, disposition or acquisition." Canon 10.07.

As the trial court found, Diocesan Canon 10.07 has been frequently and consistently enforced by the Diocese throughout its history. App. 52a.

Secondly, the Diocesan Canons provide that all property held by a parish in the Diocese shall revert to the Diocese upon dissolution of the parish:

> "All parish property is irrevocably dedicated for religious purposes, and upon the dissolution of a Parish, all properties, investments and assets shall not be distributed to any individual of the Parish but shall be conveyed to the Protestant Episcopal Church in the Diocese of Los Angeles, a corporation, to be held in trust by it or to be disposed of at its discretion." Canon 10.06.

Finally, the national Canons prescribe a comprehensive set of rules for the management of property by every parish. Among other things, those rules establish a fiscal year, require the maintenance of financial records, require annual audits by an independent public accountant, require bonds for treasurers and custodians of property, and require adequate insurance to be maintained. Pursuant to these rules, each parish in the Diocese of Los Angeles is required to submit an audited annual statistical and financial report to the Diocesan Convention.

Parishes of the Episcopal Church, in short, have been permitted to hold title to property only after acknowledging the hierarchical character of the Episcopal Church and agreeing to be bound by the Constitutions and Canons of the Episcopal Church and the Diocese. The Constitutions and Canons in turn forbid alienation or encumbrance of parish property without permission from the Diocese, and provide that property reverts to the Diocese upon dissolution of the parish. This scheme for property control and management was not established in a vacuum, but instead evolved in light of California law.

Evolution of California Law. The California Civil Code was adopted in 1872, the same year *Watson v. Jones* was decided. Section 593 of that Code authorized the incorporation of religious congregations as nonprofit corporations. The statute, however, made no mention of the relationship between local congregations and the general church organization of which those congregations were a part. Recognizing this deficiency, the Episcopal Diocese of California* resolved at its annual Convention in 1873 to appoint a committee to secure the passage of legislation "as shall recognize and provide for the exercise of the peculiar system of the Church, in regard to the form of parish organization and the manner of holding and managing property." Because of California's constitutional prohibition against the enactment of special legislation (now Cal. Const., Art. 4, § 25), however, this and subsequent committees were unable to procure legislation specially tailored for the Episcopal Church, similar to laws enacted by other states. (*E.g.*, Nev. Rev. Stat. § 82.295 *et seq.*; N.J. Stat. Ann. § 16:12-1 *et seq.*; N.Y. Religious Corporations Law §§ 40-47 (McKinney).)

In 1883 a committee reported to the Diocesan Convention its continued concern that, in the absence of remedial legislation, a California court might not recognize "the real hold that the Church, as a distinctive religious body, has upon the uses and benefits of the Property the legal title to which is vested in the various parishes, and institutions, individual Trustees within the Diocese." This committee recommended the passage of legislation that would either recognize the existence of hierarchical churches by permitting the Diocese to incorporate, or permit the parishes to evidence the hierarchical character of the Church in their organic documents. Both proposals were ultimately enacted.

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* The Episcopal Diocese of California was ultimately divided into several dioceses, including the Diocese of Los Angeles.

The first of these recommendations was implemented in 1887 by the enactment of § 604 of the California Civil Code. This new statute authorized the incorporation of "any church or other religious association in this state, composed of two or more constituent parishes, missions, congregations or societies, having a common convention, synod, council or other representative legislative body." The committee's second recommendation led ultimately to the enactment in 1897 of § 599 of the California Civil Code, which permitted nonprofit corporations to include in their articles of incorporation or bylaws a statement "[t]hat the rules, regulations or discipline, for the time being, of any specified religious denomination, society or church, shall always be part of their by-laws, ordinances, constitutions or articles of incorporation."

Sections 599 and 604 allowed church organizations to adopt a corporate structure that more nearly resembled the structure established by their internal rules and regulations. More importantly for present purposes, § 599 allowed local parishes to demonstrate the hierarchical character of the church by incorporating by reference in their articles of incorporation the rules, regulations or discipline of the parent church. The Episcopal Church in California promptly imposed such a requirement, and the required language was included in the articles of incorporation of each of the parishes involved in this litigation.

In the meantime, California courts were coming to grips with church property disputes, and their decisions consistently followed the hierarchical approach enunciated in *Watson v. Jones, supra.* In *Baker v. Ducker,* 79 Cal. 365, 21 Pac. 764 (1889), the California Supreme Court relied upon *Watson v. Jones* in holding that a majority of the members of the First Reformed Church in Stockton, who had decided to become Lutherans, could not divert Reformed Church property to their new faith. Again, in *Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 Pac. 841 (1897), the California Supreme Court reconfirmed its reliance on

the *Watson* rationale in resolving a property dispute in the Presbyterian Church. And in *Horsman v. Allen*, 129 Cal. 131, 61 Pac. 796 (1900), the California Supreme Court described *Watson* as the leading case on church property disputes "and as such conclusive."

The *Wheelock* decision explicitly resolved the question of whether incorporation of a local congregation confers upon the local congregation any measure of independence from the parent church. The answer was "no":

> "The Civil Code of this state (original section 595) expressly permits religious bodies to incorporate, but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper." 119 Cal. at 483.

After *Baker*, *Wheelock* and *Horsman*, and after adoption of the statutes described above, the Episcopal Church safely concluded that its interest in property held by individual parishes in the Diocese was adequately protected. Equally important, donors of property to Episcopal parishes could safely assume that their property would be used by the Episcopal Church and no other. Nothing happened during the next three-quarters of a century to disturb this assumption. In the years following *Baker*, *Wheelock* and *Horsman*, California courts continued routinely to apply the hierarchical church rationale of *Watson v. Jones* to resolve church property disputes arising in the United Lutheran Church of America [*First English Evangelical Lutheran Church v. Dysinger*, 120 Cal. App. 139, 6 P.2d 522 (1932)]; the Presbyterian Church [*Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church*, 157 Cal. 105, 106 Pac. 395 (1909)]; and the Baptist Church [*Maxwell v. Brougher*, 99 Cal. App. 2d 824, 222 P.2d 910 (1950)].

Moreover, additional protection for the interest of hierarchical churches in property held by their constituent units was provided by a line of decisions commencing with *In re Los Angeles County Pioneer Society,* 40 Cal. 2d 852, 257 P.2d 1 (1953) and *Pacific Home v. County of Los Angeles,* 41 Cal. 2d 844, 264 P.2d 539 (1953). Those cases, and their progeny, consistently held that property contributed to a religious or secular charity is impressed with a trust for the charitable purposes defined in the charity's articles of incorporation or other organic documents. And, the cases specifically held that the trust could not be defeated by simply amending the articles of incorporation, as respondents tried to do here.

Thus, when this controversy arose in 1977, the Episcopal Church and the Diocese reasonably believed they had taken every necessary step to protect their interests, as trustees for members and congregations of the Episcopal Church generally, in property held by local parishes of the Church.* Their belief was vindicated by the trial court's decision in this case, which followed inevitably from the authorities discussed above. The Court of Appeal reached a different conclusion only by abandoning 85 years of settled California authority and retroactively imposing a different and far stricter standard.

History of the Four Los Angeles Parishes. The trial court's findings concerning the organization and history of the four parishes involved in this litigation were not disturbed by the Court of Appeal, which simply ignored the great majority of those facts. All four parishes complied with the canonical requirement for a promise and declaration at the time of their admission as parishes that

* The *Watson v. Jones* hierarchical church rationale was discussed with approval by a California Court of Appeal as recently as January 1977, in *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside,* 66 Cal. App. 3d 69, 135 Cal. Rptr. 793 (1977).

they would "forever be held under the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, and in conformity with the Constitution and Canons of the Church now known as The Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles . . . ." App. 49a-50a.

All four parishes adopted articles of incorporation that clearly identified their corporate purposes as the organization and operation of parish congregations that were constituent units of the Episcopal Church in the Diocese of Los Angeles, subject to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese. The purpose clause of St. Mary's articles of incorporation is typical:

> "Second. That the purposes for which the said corporation is formed are:
>
> "(a) To establish and maintain a Parish, which shall form a constituent part of the Diocese of Los Angeles in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America; and so that the Constitution and Cannons [*sic*], Rules, Regulations, and Discipline of the Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles, for the time being, shall unless they be contrary to the laws of this State, always form a part of its By-Laws, ordinances, Constitution, and Articles of Incorporation, and prevail against anything therein contained that may appear repugnant to said Constitutions, Cannons [*sic*], Rules, Regulations, and Discipline.
>
> "(b) To hold all property of the association owned prior to incorporation and such as may be acquired hereafter in any manner; to transact all business relative thereto, and generally to do, perform and transact any and all acts and business, and to exercise any and all powers and privileges in any wise permitted or

granted by the laws of the State of California to Religious Corporations and required by or not contrary to the Constitution and Cannons [*sic*], Rules, Regulations, or Discipline of the said Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles."

The purpose clauses of the other parishes' articles are virtually identical or, in the case of Holy Apostles, even more explicit in declaring the subordinate character of the parish. App. 40a-48a.

Each of the four congregations remained continuously a mission or parish of the Episcopal Church, in union with the Diocese of Los Angeles, from the date of its organization until the present controversy arose in 1977. None of the parishes amended its articles of incorporation in any significant respect during that period of time. App. 41a, 43a, 46a & 48a. All four parishes routinely complied (except for two minor instances involving St. Matthias) with the requirement for Diocesan approval of the sale or encumbrance of parish property. App. 52a. Each parish also complied with the Canons concerning business methods, and regularly submitted annual statistical and financial reports to the Diocese before this controversy arose. App. 50a.

Proceedings Below. In January and February 1977 a majority of the then-current members of the four parishes voted to secede from the Episcopal Church and the Diocese and amended their articles of incorporation and bylaws to delete all references to the Episcopal Church and the Diocese. The dissidents refused to surrender possession of parish real estate and other property to loyal members of the parishes or to the Diocese, which filed these actions to recover the property in February 1977.*

* In addition, the clergyman-defendants at each of the four parishes were first inhibited from performing any sacerdotal functions and

The cases were consolidated for all purposes prior to trial. Following a two-week nonjury trial in May 1978 and lengthy post-trial proceedings, the Honorable J. Wesley Reed of the Los Angeles County Superior Court entered findings of fact, conclusions of law and judgment in favor of the Diocese and the Episcopal Church on September 6, 1978. App. 33a-58a. Judge Reed held that all property acquired by the parishes before the decision to secede (with the exception of certain items of personal property that had been given subject to specific limitations on their use) was impressed with a trust requiring the use of such property only for the benefit of members and congregations of the Episcopal Church. Judge Reed based his decision on two theories. First, he found that the Episcopal Church is hierarchical in character and that, under *Watson v. Jones* and more than 85 years of parallel California authority, the property of local congregations of a hierarchical church is impressed with a trust in favor of the parent church. Secondly, he found that the evidence before him and California charitable trust principles clearly demonstrated that the parish property was held subject to an implied trust for the Episcopal Church.

Defendants (respondents here) appealed. On January 30, 1981 a divided panel of the Court of Appeal for the Second Appellate District filed its opinion and order reversing the trial court's decision as to St. Mary's, St. Matthias and Our Saviour, and affirming as to Holy Apostles. App. 1a-32a. The Court of Appeal majority (Justices Fleming and Beach) characterized the case as one involving three distinct theories — hierarchical, implied trust and express trust. Relying upon *Jones v. Wolf,* 443 U.S. 595 (1979) and *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1979) (both of which were decided after the trial of

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then deposed from the ministry of the Episcopal Church under applicable Canon law.

this case), the majority concluded that "California has rejected the hierarchical theory as the basis for resolution of church property disputes and has adopted in its place neutral principles of law." App. 14a. Turning to the implied trust theory, the majority concluded that it represents a constitutionally impermissible approach to the resolution of church property disputes. App. 19a-20a. As authority for this proposition the majority cited this Court's decisions in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), and *Jones v. Wolf, supra.*

After rejecting hierarchy and implied trust, the Court of Appeal majority concluded that the outcome of church property disputes in California should depend upon the existence or nonexistence of an express trust affecting the property. App. 22a-23a. The majority reviewed the deeds to church property held by the parishes, the parish articles of incorporation and the Constitutions and Canons of the Episcopal Church and the Diocese at the time of each parish's incorporation, to determine whether an express trust existed here. The majority concluded that only the property of Holy Apostles is subject to such a trust. The majority attached particular significance to the fact that Holy Apostles (the most recently admitted and incorporated of the parishes) was incorporated after the adoption of California Corporations Code §§ 9203 and 9802, which refer to the incorporation of "subordinate" bodies of national societies;* to the use of the word "subordinate" in Holy Apostles' articles of incorporation; to the fact that Holy Apostles alone was incorporated after Canon 10.06 of the Diocesan Canons (requiring reverter of property to the Diocese upon dissolution of a parish) was adopted in 1958; and to the fact that only Holy Apostles echoed this

* The majority incorrectly states that California law was silent on the relationship between local and national bodies until 1939. *See* Civil Code §§ 599 and 604, discussed *supra.*

reverter clause in its articles of incorporation. App. 23a-29a.

In dissent, Justice Roth disagreed with the majority's conclusion that the hierarchical church theory of *Watson v. Jones* should be discarded. In Justice Roth's words, the "long coexistence" between the four parishes and petitioners "literally oozes the clear intention and ambition of each of the four parishes to severally achieve acceptance as a parish within the embrace of [the Episcopal Church] with full knowledge that such acceptance meant the subordination of each to the constitution and canons of [the Episcopal Church] and the transfer of the property of each to the Diocese of Los Angeles upon dissolution or other means of disaffiliation." App. 30a-31a. Justice Roth accordingly concluded that the hierarchical church rationale should have been used to decide the case or, in the alternative, that an express trust should have been found in all four cases. App. 31a.

Both petitioners and respondent Holy Apostles filed timely petitions for rehearing in the Court of Appeal. Those petitions were denied on March 2, 1981, with Justice Roth dissenting from denial of the petition filed by petitioners. App. 61a. Both petitioners and respondent Holy Apostles filed timely petitions for hearing in the California Supreme Court, which were denied without opinion on April 22, 1981. App. 62a.

Federal Questions Were Timely Raised. The constitutional questions that form the basis of this petition were timely raised by petitioners in the courts below. No constitutional infringement occurred, of course, until the Court of Appeal issued its January 30, 1981 opinion reversing the trial court's decision. In their petition for rehearing in that court, petitioners argued that retroactive abandonment of the *Watson v. Jones* hierarchical church rationale would violate the First, Fifth and Fourteenth Amendments to the United States Constitution. Petition for Rehearing, pp. 23-25. Petitioners also argued that

California was not constitutionally required under the decisions of this Court to abandon either the *Watson* approach or California's implied trust principles. *Id.*, pp. 20-23, 26-28. Petitioners raised these same arguments in their petition for hearing in the California Supreme Court. Petition for Hearing, pp. 14-20, 40-42 and 51-53.

REASONS FOR GRANTING THE WRIT

I. RETROACTIVE APPLICATION OF A NEW THEORY FOR RESOLVING CHURCH PROPERTY DISPUTES VIOLATES THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS.

In *Jones v. Wolf, supra,* this Court, while giving the states relatively wide latitude in their selection of methods for resolving church property disputes, expressly reserved the question whether a new theory for resolving such disputes could be applied retroactively. 443 U.S. at 606 n.4. This case squarely presents that question, and *certiorari* should be granted to resolve the issue.

California has followed hierarchical principles in resolving church property disputes since at least 1889. Starting with *Baker v. Ducker, supra,* in that year and continuing through the *Samoan Congregational Christian Church* case, *supra,* which was decided contemporaneously with the inception of this controversy in 1977, California courts have repeatedly reaffirmed California's adhesion to the hierarchical approach articulated by Justice Miller in *Watson v. Jones. See* cases discussed *supra,* pp. 10-11. Under the *Baker/Horsman* line of cases, the result in this case was clear. As Judge Reed held, and the Court of Appeal did not dispute, the Episcopal Church "is organized in an hierarchical fashion, as to both religious and temporal matters. Each of the Parishes was organized as a subordinate, integral part of the Episcopal Church and the Diocese." App. 56a. Each of the parishes declared prior to being allowed parish status that it would forever form an integral part of the Episcopal Church, and incorporated

this declaration in its articles of incorporation. Diocesan Canon 10.06, to which the articles of incorporation expressly subscribed, also provided that parish property would inure to the Episcopal Church upon dissolution of the parish. Although each parish's articles of incorporation could theoretically have included an express trust in favor of the Episcopal Church, an express trust was unnecessary under California law to preserve the Church's hierarchical structure.

The Court of Appeal in this case, however, interpreted this Court's opinion in *Jones v. Wolf* as allowing (or perhaps even requiring) California courts to abandon the hierarchical approach of *Baker/Horsman,* and to permit dissident members of a hierarchical church to leave the church with church property absent an *express* trust in favor of the general church. The Court believed that such an approach was mandated by the California Court of Appeal's 1979 decision in *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1970). As Justice Roth pointed out in dissent, it is far from clear that *Presbytery of Riverside* rejected the use of hierarchical principles in resolving church property disputes. Whether the use of hierarchical principles was first rejected in *Presbytery of Riverside* or this case, however, the change in California law occurred *after* this dispute arose and, indeed, after this case was tried. Retroactive application of the new standard in this case led to a result that is diametrically opposed to the intent of the Episcopal Church, the Diocese, and loyal church members who have contributed money and property to the Church over the years.

Although California may be free to change the law under which it resolves church property disputes, retroactive application of the new rules violates the First, Fifth and Fourteenth Amendments. Relying on California's adherence to hierarchical analysis, the Episcopal Church made no effort to create express trusts affecting the property held by its individual parishes but instead relied

upon its own organic documents and a series of promises and declarations in articles of incorporation and applications for parish status. These measures were entirely effective, under then-existing law, to accomplish the desired result. By changing the law in California without warning, the Court of Appeal has deprived the Episcopal Church of its property and, more importantly, has allowed dissidents to devote parish property to alternative non-Episcopal uses.*

Where the decision of a state court "constitutes a sudden change in state law, unpredictable in terms of the relevant precedents," the new law cannot be applied retroactively to property disputes that arose prior to the change. *Hughes v. Washington,* 389 U.S. 290, 295-98 (1967) (Stewart, J., concurring). "[T]he Due Process Clause of the Fourteenth Amendment forbids such confiscation [of property] by a State, no less through its courts than through its legislature, and no less when a taking is unintended than when it is deliberate." *Id.* at 298. *See also Muhlker v. New York & Harlem R.R.,* 197 U.S. 544 (1905); *Sotomura v. County of Hawaii,* 460 F. Supp. 473 (D. Ha. 1978). Here, California's rejection of the hierarchical approach that it had followed for more than 85 years was clearly "a sudden change in state law" that the Episcopal Church could not have predicted before these property disputes arose.

The problem is all the more acute when the law under which courts resolve *church* property disputes is unexpectedly changed and applied retroactively. The First and Fourteenth Amendments protect the free exercise of religion and accordingly prohibit a State from

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* One serious flaw in the majority opinion below is its failure to place *any* limits on the use of property controlled by the dissidents at St. Mary's, Our Saviour and St. Matthias. At the very least, the majority opinion sanctions diversion of that property to the Roman Catholic, Greek Catholic, Greek Orthodox or other "related" churches. App. 20a.

shifting ultimate control of church property from the church itself to a subordinate church body where the church has specified otherwise. *See Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952); *Northside Bible Church v. Goodson,* 387 F.2d 534, 537-38 (5th Cir. 1976); *Sustar v. Williams,* 263 So. 2d 537, 542-43 (Miss. 1972). The Constitution gives churches the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. at 116. The decision of the Court of Appeal in this case, however, has without any warning given local parishes total control over local property, even though the Episcopal Church had carefully structured itself under prior California law to provide for ultimate Diocesan control of all property.

II. THE COURT BELOW ERRED IN CONCLUDING THAT THE FIRST AND FOURTEENTH AMENDMENTS PRECLUDE RECOGNITION OF IMPLIED TRUSTS AFFECTING CHURCH PROPERTY.

The Court of Appeal compounded its error by misinterpreting this Court's opinion in *Jones v. Wolf, supra.* According to the Court of Appeal, this Court's opinions in *Jones* and prior cases preclude state courts from inquiring into whether local church property is invested with any *implied* trust in favor of the general church. Under the Court of Appeal's interpretation of *Jones,* only express trusts can constitutionally be recognized. This court therefore should also grant *certiorari* to correct this misinterpretation of its decisions and expressly sanction the use of implied trust principles in resolving church property disputes.

The trial court did not rely solely on hierarchical theory in reaching its decision, but also held that parish property was subject to an implied trust for the benefit of the Episcopal Church. Under well established charitable trust principles, property given to a California charity without an express limitation on its use is deemed given in trust for the charitable purposes of the organization. See cases

cited *supra*, p. 12. Judge Reed found that the charitable purposes of the four parishes here involved were clearly and unambiguously expressed in the articles of incorporation of each parish. Moreover, Judge Reed also found that extrinsic evidence, much of it offered by respondents at trial, confirmed the intention expressed in the parish articles of incorporation to organize and operate the parishes as integral, subordinate units of the Episcopal Church and the Diocese, subject to the rules and discipline of those entities. For these reasons, Judge Reed held that property contributed to and held by the four parishes before the vote to secede was subject to an implied trust for the benefit of members and congregations of the Episcopal Church. App. 56a-57a.

The Court of Appeal majority rejected this alternative conclusion on the ground that the First and Fourteenth Amendments, as interpreted by this Court, preclude courts from examining church papers and history for evidence of an implied trust. According to the Court of Appeal majority, such an examination would lead California courts into "the thicket of ecclesiastical controversy, for a court would be required to deduce and infer the nature of the general church and its implied authority over the property of its affiliated congregations." App. 19a-20a.

No opinion of this Court interpreting the First and Fourteenth Amendments, however, precludes examination for implied trusts. Although this Court has rejected the so-called "English theory" of implied trust "whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, *provided the general church had not 'substantially abandoned' the tenets of faith and practice as they existed at the time of affiliation,*" the "English theory" was rejected because it would have involved state courts in "religious controversies" over whether the general church had abandoned its original beliefs. *See Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church*, 393 U.S. 440 (1969); *Jones v. Wolf*, *supra*, 443 U.S. at 599. Under the

approach taken by Judge Reed in this case, however, no question is raised as to the adherence of any body to particular religious doctrines. Instead, the only question is whether the individuals in control of the property are still using it to operate a parish of the Episcopal Church. The uncontradicted evidence here is that they are not.

This Court has frequently approved similar judicial inquiries into whether the persons exercising control over church property were in fact recognized as the persons entitled to control by church authorities. *See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Kedroff v. Saint Nicholas Cathedral, supra; Bouldin v. Alexander,* 82 U.S. (15 Wall.) 131 (1872); *Watson v. Jones, supra.* Here, the clergyman-respondents have been removed from the ministry of the Episcopal Church by competent Church authority — an action they did not challenge. They and the other respondents who have voluntarily withdrawn from the Church are no more entitled to continued possession of Church property than was Bishop Dionisije in the *Serbian Orthodox Diocese* case. The Court of Appeal erred not only in failing to reach this result, but also in its belief that it was precluded by the decisions of this Court from using an implied trust approach to do so.

An error in constitutional interpretation of this magnitude seriously interferes with the free exercise of religion by hierarchical churches in California. Not only are hierarchical churches and their members being deprived unfairly and without warning of property accumulated in reliance on prior law, but such churches will be required in the future to impose special limitations in the form of express trusts and deed restrictions, not required of other charities, to insure that church property is not diverted from its intended purpose. As Justice Powell observed in *Jones v. Wolf,* such a lengthy and formalistic process may well precipitate church property disputes rather than preventing them. 443 U.S. at 614 n.2 (Powell, J., dissenting).

III. THE COURT OF APPEAL'S DECISION UNCONSTITUTIONALLY DENIES CALIFORNIA CHURCHES EQUALITY OF TREATMENT WITH SECULAR CHARITIES.

As the California Attorney General urged in the trial court, implied trusts are frequently used to resolve all forms of charitable property disputes. Application of implied trust principles to the church property dispute in question here no more involved Judge Reed in "ecclesiastical questions" than does application of implied trust principles to property disputes involving non-religious charities. Indeed, by refusing to apply basic California charitable trust law to church disputes, the Court of Appeal denied to the Episcopal Church the equality of treatment demanded of state courts by *Watson v. Jones,* 80 U.S. at 714, and subsequent decisions.

In *Synanon Foundation, Inc. v. California,* 444 U.S. 1307 (1979), Justice Rehnquist cited *Jones v. Wolf* for the proposition that churches are not "entitled to different treatment than that accorded to other charitable trusts" under the First and Fourteenth Amendments. Conversely, churches cannot be singled out for special or discriminatory treatment. The Court of Appeal's requirement that an express trust must exist before limitations on the use of church property will be recognized will inevitably provide *less* protection for church property than for property contributed to other charities, and may discourage voluntary support of religious organizations. Donors of real property and people who make testamentary bequests may be able (assuming they are fully informed and properly advised) to ensure the use of their gifts for specific charitable purposes by creating express trusts. But such a standard offers no protection at all for small donors in the weekly collection plate, who do not as a practical matter have a similar ability to limit their gifts.

IV. THE FIRST AND FOURTEENTH AMENDMENTS REQUIRE STATE COURTS TO RECOGNIZE AND GIVE EFFECT TO THE INTENTIONS OF CHURCH BODIES IN RESOLVING CHURCH PROPERTY DISPUTES.

The ultimate objection to the Court of Appeal's decision is that the Court totally ignored the most important question it should have considered: "What was the intent of the parishes, the Diocese and the Episcopal Church as to disposition of parish property if the parishes' congregations ultimately abandoned the Episcopal Church?" *Certiorari* should be granted to correct this fundamental error.

As courts in numerous other states have recognized in decisions rendered during the last four years,* the Episcopal Church is organized in a hierarchical fashion with ultimate control over parish property in the hands of the

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* ARIZONA: *Diocese of Arizona v. Donovan* (Gila County, Ariz. Super. Ct. No. 20-232-B, Feb. 21, 1980); COLORADO: *Bishop & Diocese of Colorado v. Mote* (Denver County, Col. Dist. Ct. No. C-75959, Jan. 21, 1980); FLORIDA: *Duncan v. Watterson* (Palm Beach County, Fla. Cir. Ct. No. 77-3926, Feb. 21, 1979); NEVADA: *Protestant Episcopal Church in the Diocese of Nevada v. Tea* (Clark County, Nev. Dist. Ct. No. A165130, May 23, 1978), *aff'd sub nom., Tea v. Protestant Episcopal Church*, 610 P. 2d 182 (1980); NEW JERSEY: *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 391 A.2d 563, 161 N.J. Super. 230 (1978), *aff'd* 417 A.2d 19, 83 N.J. 572 (1980), *cert. denied*, 101 S. Ct. 954 (1981); OKLAHOMA: *St. David's Episcopal Church v. Parsons* (Oklahoma County, Okl. Dist. Ct. No. CJ-77-2940, Oct. 31, 1977); VIRGINIA: *Diocese of Southwestern Virginia v. Buhrman* (Clifton Forge, Va. Cir. Ct. No. 1746, Nov. 28, 1977), *appeal denied* (Va. 1978) and *Diocese of Southwestern Virginia v. Wykoff* (Amherst County, Va. Cir. Ct. Chancery No. 3748, Nov. 16, 1979). All of these cases were decided in favor of the Episcopal Church under circumstances nearly identical to the present case. Copies of these decisions were provided to the Court of Appeal in an appendix to petitioners' original brief on appeal in that court.

Diocese and the parent Church. Moreover, as Justice Roth noted, and the majority of the Court of Appeal panel did not deny, the evidence before Judge Reed overwhelmingly showed that all of the parishes sought acceptance as a parish "with full knowledge that such acceptance meant . . . the transfer of the property of each to the Diocese of Los Angeles upon dissolution or other means of disaffiliation." App. 31a. Indeed, the Diocesan Canons, to which each of the parishes explicitly subscribed in its articles of incorporation, explicitly provided that parish property would inure to the Diocese upon such dissolution.

The Court of Appeal majority found none of these factors admissible or relevant because of its misinterpretation of the "neutral principles" approach endorsed by this Court in *Jones v. Wolf, supra*: Neither the hierarchical nature of the Episcopal Church nor California's implied charitable trust principles could be considered under the First and Fourteenth Amendments, in the view of the Court of Appeal, because to do so would require the court "to deduce and infer the nature of the general church and its implied authority over the property of its affiliated congregations," an improper "ecclesiastical" inquiry. App. 19a-20a. Because Diocesan Canon 10.06 was adopted in 1958, subsequent to the adoption of all but Holy Apostles' articles of incorporation, the Court of Appeal majority held that the Canon was not binding on the other parishes and ignored it. App. 25a-27a.

In no case affirmed by this Court has a state court taken so constricted an approach to resolving church property disputes, or ignored so completely the intentions of the parties in interest. In both *Jones v. Wolf, supra,* and *Maryland & Virginia Eldership v. Church of God at Sharpsburg,* 396 U.S. 367 (1970), the state courts looked not only at the language of deeds, local church charters and state statutes, but also at all other relevant evidence including the rules of the general church concerning ownership and control of church property. 443 U.S. at 600, 603. The Court of Appeal's approach in this case, by contrast, "denies to the

courts relevant evidence as to the religious polity — that is, the form of governance — adopted by the church members" and thus thwarts the intentions of all elements of the church in violation of the First and Fourteenth Amendments. *Jones v. Wolf, supra,* 443 U.S. at 612-13 (Powell, J., dissenting). *See also* Comment, *Church Property Disputes: The Trend and the Alternative,* 31 Mercer L. Rev. 559, 577-78 (1980) (criticizing constricted use of "neutral principles" to resolve church property disputes).

The Court of Appeal's failure to accord any relevance to Canons of the Episcopal Church, except in the case of Holy Apostles, strikes especially at the heart of the First Amendment. A "careful examination" of the constitution and rules of the general church may frequently be necessary to determine the intention of church entities as to control of church property. *Jones v. Wolf, supra,* 443 U.S. at 619-20 (Powell, J., dissenting). Although Canon 10.06 was not adopted until 1958, all of the parishes were bound by it under Canon law and, as Judge Reed found, each parish gave implied consent by acquiescing in the Canon without complaint for almost 20 years. App. 56a.

As Justice Roth noted in dissenting from the majority's opinion in the Court of Appeal, the ultimate question in all church property disputes must be "the nature of the relationship of the parties and . . . what was contemplated by them in arriving at and agreeing upon that relationship." App. 31a. Both the hierarchical and implied trust approaches improperly rejected by the Court of Appeal effectively recognize and protect the intentions and legitimate expectations of parties at all levels of a hierarchical church. The Court of Appeal's refusal to apply those theories here was clear constitutional error.

V. CONCLUSION

For each of the foregoing reasons, a writ of *certiorari* should issue to review the judgment and opinion of the California Court of Appeal.

Respectfully submitted,

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